



U.S. Department of Justice

Immigration and Naturalization Service

OFFICE OF ADMINISTRATIVE APPEALS  
425 Eye Street N.W.  
ULLB, 3rd Floor  
Washington, D.C. 20536

FILE

Date:

JUN 15 2000

IN RE: Applicant:

APPLICATION:

IN BEHALF OF APPLICANT:

Public Copy

INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office which originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. 103.5(a)(1)(i).

If you have new or additional information which you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. Id.

Any motion must be filed with the office which originally decided your case along with a fee of \$110 as required under 8 C.F.R. 103.7.

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prevent clearly unwarranted  
invasion of personal privacy

FOR THE ASSOCIATE COMMISSIONER,  
EXAMINATIONS

Terrance M. O'Reilly, Director  
Administrative Appeals Office

JUN 15 2000

**DISCUSSION:** The application was denied by the Director, Nebraska Service Center, and is now before the Associate Commissioner for Examinations on appeal. The director's decision will be withdrawn and the matter will be remanded to her for further action.

The applicant is a native and citizen of Honduras who indicated on his application that he was present in the United States without a lawful admission or parole in September 1989. The director denied the application for Temporary Protected Status (TPS) under § 244 of the Immigration and Nationality Act (the Act), 8 U.S.C. 1254a, because the applicant failed to submit the requested documentation relating to the court's disposition of any proceedings in which he was involved, or to establish he had been residing in the United States since December 30, 1998 and continuously physically present in the United States since January 5, 1999.

On appeal, counsel for the applicant states that the applicant is in the process of obtaining additional evidence.

Section 244(c) of the Act, and the related regulations in 8 C.F.R. 244, provide that an applicant who is a national of Honduras is eligible for temporary protected status only if such alien establishes that he or she:

- a. Is a national of a state designated under § 244(b) of the Act;
- b. Has been continuously physically present in the United States since January 5, 1999;
- c. Has continuously resided in the United States since December 30, 1998;
- d. Is admissible as an immigrant;
- e. Is not ineligible under 8 C.F.R. 240.4; and
- f. Pursuant to § 303(b)(1) of IMMACT 90, has timely registered for such status between January 5, 1999 and July 5, 2000.

The term continuously physically present, as used in 8 C.F.R. 244.1, means actual physical presence in the United States since January 5, 1999. Any departure, not authorized by the Service, including any brief, casual, and innocent departure, shall be deemed to break an alien's continuous physical presence.

The burden of proof is upon the applicant to establish that he or she meets the above requirements. Applicants shall submit all documentation as required in the instructions or requested by the Service. 8 C.F.R. 244.9(a). The sufficiency of all evidence will be judged according to its relevancy, consistency, credibility, and probative value. To meet his or her burden of proof the applicant must provide supporting documentary evidence of eligibility apart from his or her own statements. 8 C.F.R. 244.9(b).

The record contains evidence that the applicant was convicted (1) on October 22, 1998 in Denver, Colorado, for having a defective or

unsafe vehicle; (2) on September 22, 1998 in Douglas, Colorado, for not being in possession of insurance; (3) on October 29, 1997 in Denver, Colorado, for having defective headlamps/defective or unsafe vehicle.

The director states in her decision that Service information indicates that the applicant was charged on March 27, 1997 with three offenses in Clarksburg, West Virginia. That information is not present in the record for review and the record is devoid of evidence to show that the applicant ever resided in West Virginia.

The Associate Commissioner notes that the applicant's three convictions regarding motor vehicle related violations occurred in the State of Colorado and place him in the United States prior to December 30, 1998. Further, the Associate Commissioner is not convinced that such motor vehicle violations are classifiable as misdemeanors which would render the applicant inadmissible under § 244(c)(2)(B) of the Act, 8 U.S.C. 1254a(c)(2)(B).

The director's decision will be withdrawn and the matter will be remanded to her to afford the applicant additional time in which (1) to submit evidence which refutes or elaborates on the alleged West Virginia offenses and to provide dispositions of those offenses if they actually occurred, (2) to submit additional evidence in support of his alleged residence and physical presence in the United States and (3) to provide evidence as to whether any or all of the Colorado offenses are classifiable as misdemeanors. The director will then render a new decision which, if adverse to the applicant, shall be certified to the Associate Commissioner for review.

**ORDER:** The director's decision is withdrawn. The matter is remanded to her for further consideration and the entry of a new decision which, if adverse to the applicant, is to be certified to the Associate Commissioner for review.